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THE TRAVANCORE-COCHIN PREVENTION OF EVICTION OF KUDIKIDAPPUKARS BILL

(Report of the Select Committee)

The Select Committee to which the Bill was referred have considered the Bill clause by clause and now submit this, their report, with the Bill as reported by the Committee annexed thereto.

2. The Bill was published in the Gazette Extraordinary dated 26th July 1954.

3. The Bill was introduced in the Assembly on the 7th August 1954 and the motion for reference to a Select Committee was adopted on the 29th March 1955.

4. *Clause 7.* The Committee feel that where a kudikidappukaran occupying a kudiyiruppu situated outside the limits of Municipalities and the Corporation of Trivandrum, is sought to be evicted under clauses (a) and (b) on the ground that he has intentionally committed acts of waste on the holding or that he has

unlawfully appropriated any part of the produce from the holding, the owner shall pay to the kudikidappukaran the full value of the homestead and also 75 per cent of the value of the site comprised in the kudiyiruppu. They also feel that where a kudikidappukaran in a non-municipal area is sought to be evicted under clause (c) on the ground that the owner requires the land bonafide for building purposes he shall provide the kudikidappukaran with another site for his use and occupation in any of the lands belonging to the owner in the same village or, if the owner has no such lands, he shall pay to the kudikidappukaran the full value of the kudiyiruppu. The Committee think that in the absence of such a provision it will be difficult for a kudikidappukaran who is evicted to procure another homestead. A new sub-clause has been added to clause 7 for this purpose.

The Committee also feel that sub-clause (d) providing for the eviction of a kudikidappukaran for intentionally or collusively allowing strangers to commit waste or encroach upon the kudiyiruppu is unnecessary. This sub-clause has accordingly been omitted.

5. *Clause 12.* Since registration as kudikidappukars is intended only in the case of kudikidappukars who are in occupation of the kudiyiruppu at the commencement of the Act, the Committee has made this position clear by effecting suitable changes. The Committee is of the view that the registration of kudikidappukars should be completed as early as possible and that Government should not have the power to extend the period fixed for applying for registration. The Committee however think that the period of six months proposed in the Bill is not sufficient and that a period of one year should be allowed. Suitable modifications have been effected to sub-clause (2) to achieve the above objects.

The other modifications made by the Committee are only verbal ones.

A. J. JOHN,
Chairman of the Select Committee.

Trivandrum,
April 20, 1955.

ഭിന്നാഭിപ്രായക്കുറിപ്പ്.

യോജിച്ചുള്ള അഭിപ്രായം രേഖപ്പെടുത്താൻ പരമാവധി ശ്രമിച്ചിട്ടും ഭൂരിപക്ഷത്തിന്റെ ഉറച്ച എതിർപ്പുമൂലം ഞങ്ങൾ ഒരു ഭിന്നാഭിപ്രായക്കുറിപ്പെഴുതാൻ നിർബന്ധിതരായതാണ്. അഭിപ്രായഭിന്നതയ്ക്കു ഇടയാക്കിയ സംഗതികൾ ഓരോന്നായി പ്രസ്താവിച്ചുകൊള്ളട്ടെ.

(എ) കുടികിടപ്പുകാരന്റെ നിർവ്വചനം.

2-ാം വകുപ്പ് സി ഉപവകുപ്പിൽ പറയുന്ന കുടികിടപ്പുകാരന്റെ നിർവ്വചനം ഈ രാജ്യത്തെ കുടികിടപ്പുകാരിൽ 90 ശതമാനത്തെയും ഉൾക്കൊള്ളുന്നില്ല. പലതരം ദുർവ്യാഖ്യാനങ്ങൾക്ക് ഇടം നൽകുകയും ചെയ്യുന്നുണ്ട്. നിർവ്വചനപ്രകാരം പുരയുണ്ടാക്കാനുള്ള സ്ഥലംമാത്രം ഉടമസ്ഥൻ നൽകുകയും, പുര കുടികിടപ്പുകാരൻ ഉണ്ടാക്കുകയും ചെയ്യുന്നെങ്കിൽമാത്രമേ കുടികിടപ്പുകാരനാവുകയുള്ളൂ. പുര ഉടമസ്ഥന്റേതാണെന്നു കാണിച്ചുള്ള വാടകച്ചീട്ടുകളും കുലിച്ചാർത്തുകളും അനുസരിച്ച് താമസിക്കുന്നവരൊന്നും കുടികിടപ്പുകാരല്ലെന്നർത്ഥം. അത്തരക്കാരെല്ലാം വാടകക്കെട്ടിടങ്ങളിൽ താമസിക്കുന്നവരാണെന്നു ദുർവ്യാഖ്യാനം ചെയ്യുമെന്നു തീർച്ചയാണ്. വാടകക്കെട്ടിടങ്ങളെ ബില്ലിൽനിന്നും ഒഴിവാക്കിയിട്ടുമുണ്ട്. കുടികിടപ്പുകാരിൽ 90 ശതമാനവും കുലിച്ചാർത്തുകളോ, വാടകച്ചീട്ടുകളോ ഒപ്പിട്ടുകൊടുത്ത് സ്വന്തമായി നിർമ്മിച്ച ചെററപ്പുരകളിൽ താമസിക്കുന്നവരുമാണ്. ചിലപ്പോൾ കുലിയോ വാടകയോ കൊടുക്കാറുണ്ടാവില്ല. മേൽപ്പറഞ്ഞ നിർവ്വചനമംഗീകരിച്ചാൽ ബഹുഭൂരിപക്ഷം അക്കുടികിടപ്പുകാർക്കും ബില്ലിന്റെ സംരക്ഷണം ലഭിക്കുകയില്ല. കൊച്ചിയിലെ 47-ലെ വിളംബരപ്രകാരം കൊല്ലത്തിൽ 36 ക. യിൽ താഴെമാത്രം വാടക കൊടുക്കാൻ വ്യവസ്ഥചെയ്തിട്ടുള്ള വാടകച്ചീട്ടുകൾപ്രകാരം താമസിക്കുന്ന കുടികിടപ്പുകളെ ഒഴിപ്പിക്കാൻ പാടില്ല. ഈ ആനുകൂല്യം നിഷേധിക്കുന്നതിനുവേണ്ടി ഉടമകൾ എല്ലാ കുടികിടപ്പുകാർക്കും 36 ക. യിൽ കവിഞ്ഞ വാടക കാണിച്ച് വാടകച്ചീട്ടുകളും കുലിച്ചാർത്തുകളും എഴുതിച്ചിട്ടുണ്ടെന്ന് സാർവ്വത്രികമായ പരാതിയുണ്ട്. അതുകൊണ്ട് കുടികിടപ്പുകാരൻ എന്ന വാക്കിന്റെ നിർവ്വചനത്തിൽ കുലിച്ചാർത്തുപ്രകാരമോ വാടകച്ചീട്ടനുസരിച്ചോ താമസിക്കുന്നവരുൾപ്പെടെ എല്ലാത്തരം കുടികിടപ്പുകാരെയും ഉൾപ്പെടുത്തണം. ഞങ്ങളുടെ ഈ നിർദ്ദേശം ഭൂരിപക്ഷമംഗീകരിച്ചില്ല. ഇപ്പോഴത്തെ നിർവ്വചനത്തിൽ ഞങ്ങളുടെ നിർദ്ദേശം അടങ്ങിക്കിടപ്പുണ്ടെന്നു അവർ വാദിച്ചു. കോടതിയിൽച്ചെന്ന് അവ്യക്തമായ ഒരു നിർവ്വചനം വ്യാഖ്യാനിച്ചു നീതിനേടാൻ വേണ്ട ശേഷി കുടികിടപ്പുകാരനില്ലാത്തതുകൊണ്ട് നിർവ്വചനം കുറേക്കൂടി വ്യക്തമാക്കാൻ ഈ നിർദ്ദേശം അംഗീകരിക്കണമെന്ന് ഞങ്ങൾ വാദിച്ചു. വീടില്ലാത്ത ഒരുവനെ മനുഷ്യസ്നേഹത്തിന്റെ പേരിൽ സ്വന്തം ഭൂമിയിൽ കയററി താമസിപ്പിക്കുന്ന ഉടമസ്ഥന് കുടികിടപ്പുകാരനെ ഒഴിപ്പിക്കണമെങ്കിൽ കോടതി കയറിയേ പററൂ എന്നു വരുന്നതുതന്നെ കുടികിടപ്പുകാരന് സംരക്ഷണമാണെന്നു ഭൂരിപക്ഷം ചൂണ്ടിക്കാണിച്ചു. വ്യക്തമായ നിയമവ്യവസ്ഥകൾപ്രകാരമുള്ള സംരക്ഷണമുണ്ടെങ്കിൽക്കൂടി കുടികിടപ്പുകാരന് അതിന്റെ പ്രയോജനം നിഷേധിക്കപ്പെടുകയാണ്. അതുകൊണ്ട് ഞങ്ങളുടെ നിർദ്ദേശം ഉൾക്കൊള്ളിച്ചു കുടികിടപ്പുകാരന്റെ നിർവ്വചനം മാററി എഴുതേണ്ടതാണ്.

2. ഒഴിപ്പിക്കൽ അനുവദിക്കുന്ന വ്യവസ്ഥകൾ.

(എ) ഒഴിപ്പിക്കൽ അനുവദിക്കുന്ന 7-ാം വകുപ്പിന്റെ ഭാഗം പാടേ മാററണമെന്ന ഞങ്ങളുടെ നിർദ്ദേശത്തെയും ഭൂരിപക്ഷം തള്ളിക്കളഞ്ഞു. കുടിയൊഴിപ്പിക്കൽ അനുവദിക്കുന്നതിനു 7-ാം വകുപ്പിൽ പറയുന്ന 9 കാരണങ്ങളിൽ 1, 2, 4 എന്നീ ഉപവകുപ്പുകളിൽ പറയുന്ന കുററങ്ങൾ ഇൻഡ്യൻ ക്രിമിനൽ ശിക്ഷാനിയമപ്രകാരം ശിക്ഷാർഹങ്ങളാണ്. ആ കുററങ്ങൾ ഒരു കുടികിടപ്പുകാരൻ ചെയ്താൽ ശിക്ഷ കുടിയൊഴിപ്പിക്കലാണെന്ന് വന്നുചേരുന്നതു ക്രിമിനൽ നിയമം തിരുത്തിയെഴുതലാണ്. ആ കുററങ്ങൾ കുടികിടപ്പുകാരൻ ചെയ്താൽ ക്രിമിനൽക്കോടതി മുഖാന്തിരം ജന്മിക്കു പരിഹാരം നേടാവുന്നതുമാണ്. മേൽപ്പറഞ്ഞ 9 ഉപവകുപ്പുകളിൽ ഏതെങ്കിലും ഒന്നിന്റെ മറപിടിച്ചുകൊണ്ടു ഏതു കുടികിടപ്പുകാരനെയും ഉടമസ്ഥനു ഒഴിപ്പിക്കാൻ കഴിയും. കോടതിയിൽ ചെന്നു കുടികിടപ്പുകാരന്റെ നിരപരാധിത്വം തെളിയിക്കാനുള്ള അവന്റെ കഴിവുകേടാണു ഇന്നു രാജ്യം മുഴുക്കെ ഗുണ്ടാകളുടേയും പോലീസിന്റെയും കോടതിയുടേയും സഹായത്തോടുകൂടി നടക്കുന്ന ആയിരക്കണക്കായ കുടിയൊഴിപ്പിക്കലുകൾക്കു കാരണം. അതുകൊണ്ടു 7-ാം വകുപ്പിലെ ഉപവകുപ്പുകൾ 9-ം മാററി ഉടമസ്ഥനു മററു ഭൂമിയില്ലെങ്കിൽ മാത്രം കുടിയിരുപ്പിൽ ഒരു ഭാഗം ഒഴിപ്പിച്ചെടുക്കാമെന്ന വ്യവസ്ഥ ചെയ്യണമെന്നാണു ഞങ്ങൾ നിർദ്ദേശിക്കുന്നതു. കുടികിടപ്പുകാരന്റെ ഭാഗത്തുതന്നെ നില ഉറപ്പിച്ചുകൊണ്ടു ബില്ലിനെ പരിശോധിക്കാൻ വിസമ്മതിച്ച ഭൂരിപക്ഷം അതിനെ സ്വീകരിച്ചില്ല.

(ബി) <u>മറെറാരു കുടിയിരുപ്പുകൊടുത്തുള്ള ഒഴിപ്പിക്കൽ.</u> മററു എവിടെയെങ്കിലും ഒരു കുടിയിരുപ്പു നൽകി കുടി ഒഴിപ്പിക്കാമെന്നു 11-ാം വകുപ്പിൽ പറയുന്നു. ഈ വ്യവസ്ഥകൾ എടുത്തുകളയണമെന്നു ഞങ്ങൾ നിർദ്ദേശിച്ചു. തിരുവിതാംകൂർ-കൊച്ചിയുടെ ഏതെങ്കിലും ഒരു ഭാഗത്തു ഉടമസ്ഥനു സ്ഥലമുണ്ടെങ്കിൽ അവിടെ അയാളുടെ ചെലവിൽ ഒരു കുടിൽ വച്ചുകൊടുത്താൽ കുടികിടപ്പുകാരനെ കുടിയിരുപ്പിൽനിന്നു ഒഴിപ്പിക്കാമെന്നാണു പറയുന്നതു. കുടികിടപ്പുകാരന്റെ താമസസ്ഥലവും അയാളുടെ തൊഴിലുമായുള്ള ബന്ധം മുറിച്ചുകളയാനാണു തന്മൂലം ഇടയാവുക. ഇതിനെസംബന്ധിച്ചു കോടതിയിൽ വാദിച്ചു നീതി നേടിക്കൊള്ളണമെന്നു ഭൂരിപക്ഷം പറയുന്നതു നീതി അവർക്കു നിഷേധിക്കുന്നതിനു തുല്യമാണ്. ഞങ്ങളുടെ നിർദ്ദേശം ഭൂരിപക്ഷം തള്ളിക്കളയുകയാണുണ്ടായതു. മേൽപറഞ്ഞ വ്യവസ്ഥകൾ നിലനിറുത്തുകയാണെങ്കിൽ ഒഴിപ്പിക്കുന്ന കുടിയിരുപ്പിനു തൊട്ടടുത്തുതന്നെ മറെറാരു കുടിയിരുപ്പു നൽകണമെന്നു ഉടമസ്ഥനെ നിർബന്ധിക്കണം.

൩. കുടികിടപ്പ് രജിസ്റ്റർ ചെയ്യണമെന്ന വ്യവസ്ഥ.

ആക്ററു പാസ്സായി ആറുമാസത്തിനുള്ളിൽ ഓരോ കുടികിടപ്പുകാരനും അയാൾ താമസിക്കുന്ന വില്ലേജിലെ വില്ലേജ് ആഫീസറോട് അപേക്ഷിച്ച് പേർ രജിസ്റ്റർ ചെയ്തെങ്കിലേ സ്ഥിരാവകാശം കിട്ടുകയുള്ളുവെന്ന

12-ാംവകുപ്പിലെ രണ്ടാം ഉപവകുപ്പിലെ വ്യവസ്ഥയും എടുത്തുകളയണമെന്നാണ് ഞങ്ങളുടെ നിർദ്ദേശം. ഇതും ഭൂരിപക്ഷം സ്വീകരിച്ചിട്ടില്ല. ഈ വ്യവസ്ഥ കുടിയൊഴിപ്പിക്കൽ നിരോധനനിയമങ്ങളിൽ കാണാൻ തുടങ്ങിയിട്ട് വർഷങ്ങൾ അഞ്ചാറായിട്ടും ഇതുവരെ മൊത്തം കുടിയിരുപ്പുകളുടെ ഒരു ചെറിയ ശതമാനംമാത്രമേ രജിസ്റ്റർ ചെയ്തിട്ടുള്ളു എന്ന വസ്തുതയാണ്, രജിസ്ട്രേഷൻ ആറുമാസത്തിനുള്ളിൽ നടത്തിക്കൊള്ളേണമെന്ന വകുപ്പ് എടുത്തുകളയണമെന്ന നിർദ്ദേശിക്കാൻ ഞങ്ങളെ പ്രേരിപ്പിച്ചത്.

൪. ഉപസംഹാരം

1124-ലെ തിരുവിതാംകൂർ കുടിയിറക്കുനിരോധനബില്ലിലെ വ്യവസ്ഥകളെ ശരിക്കും അനുസരിക്കുന്ന വ്യവസ്ഥകളാണു ഈ ബില്ലിലുള്ളതെന്ന് ബില്ലിന്റെ അവതാരകൻ ഉദ്ദേശകാരണങ്ങളിൽ പറയുന്നുണ്ട്. 47-ലെ കൊച്ചി വിളംബരവും, തിരുവിതാംകൂർ കുടിയിറക്കു നിരോധന ആക്ടും അനുസരിച്ചു് നിയമത്തിന്റെ പേരിൽത്തന്നെ കുടിയിറക്കാനുള്ള നാലോ അഞ്ചോ വഴികൾ നിർദ്ദേശിച്ചു് ജന്മിമാർക്കു കുടിയിറക്കാൻ പ്രേരണ നൽകുകയാണു ചെയ്യുന്നതെന്നു് കുടിയിറക്കപ്പെടുന്ന വിഭാഗങ്ങളിൽനിന്നുയർന്നു വന്ന ആക്ഷേപം അവതാരകൻ അംഗീകരിച്ചിട്ടില്ല എന്നു പറയേണ്ടിയിരിക്കുന്നു. ഭൂരിപക്ഷവും അവതാരകന്റെ നിലപാടിൽനിന്നുകൊണ്ടാണു് ബില്ലിനെ പരിശോധിച്ചതു്. അവർ അവഗണിച്ചതു് പൊള്ളയായ ഒരു കുടിയിറക്കു നിരോധന ആക്ട് എങ്കിലും കൊണ്ടുവരാൻ ഭരണകക്ഷിയെ രാഷ്ട്രീയസമ്മർദ്ദം ചെലുത്തി വിജയപൂർവ്വം നിർബന്ധിച്ച 20 ലക്ഷത്തിൽപ്പരം വരുന്ന കർഷകത്തൊഴിലാളികളുടെയും വ്യവസായത്തൊഴിലാളികളുടെയും കൃഷിക്കാരുടെയും സംഘടിതശക്തി മുന്നോട്ടുവച്ച ആക്ഷേപങ്ങളെയാണ്. ആ ആക്ഷേപങ്ങളെ കണക്കിലെടുത്തുകൊണ്ട് വ്യക്തമായ നിർദ്ദേശങ്ങൾ, ബില്ലിനെ കുടികിടപ്പുകാരുടെ താൽപ്പര്യങ്ങൾക്കു സംരക്ഷണം നൽകുന്ന തരത്തിൽ മാറ്റാൻ ഞങ്ങൾ വയ്ക്കുകയുണ്ടായി. സെലക്ടുകമ്മിറ്റിയിലെ ഭൂരിപക്ഷം ഞങ്ങളുടെ നിർദ്ദേശങ്ങൾ തള്ളിക്കളഞ്ഞെങ്കിലും നിയമസഭ ഞങ്ങളുടെ നിർദ്ദേശങ്ങൾ സ്വീകരിച്ചു് കുടിയൊഴിപ്പിക്കൽ നിരോധനനിയമത്തിലെ വിടവുകളടച്ചു് കുടിയൊഴിപ്പിക്കൽ നിശ്ശേഷം തടയാൻ സന്നദ്ധമാകണമെന്നു് ഞങ്ങൾ പ്രതീക്ഷിക്കുന്നു.

Trivandrum,
19-4-1955.

(Sd) 1. P. R. Madhavan Pillai
2. K. Chandrasekhara Sastri
3. P. K. Chathan

V. KRISHNAMOORTHI,
Secretary, Legislative Assembly.

THE TRAVANCORE-COCHIN PREVENTION OF EVICTION OF KUDIKIDAPPUKARS BILL.

(As reported by the Select Committee)

A Bill to make provision for the prevention of eviction of Kudikidappukars except under certain specified circumstances.

Preamble. WHEREAS it is expedient to make provision for the prevention of eviction of Kudikidappukars except under certain specified circumstances;

Be it enacted in the sixth year of the Republic of India as follows:—

1. *Short title, extent and commencement.* (1) This Act may be called the Travancore-Cochin Prevention of Eviction of Kudikidappukars Act, 1955.

(2) It extends to the whole of the State of Travancore-Cochin.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.* In this Act, unless the context otherwise requires—

(*a*) "eviction" means the recovery of possession of a Kudiyiruppu from a Kudikidappukaran;

(*b*) "holding" means a compact block of land held by a person whether as owner, mortgagee, lessee or otherwise on any portion of which there is a Kudiyiruppu:

(*c*) "Kudikidappukaran" means a person who has no homestead or land of his own to erect a homestead and has been permitted by an owner of land to have the use and occupation of a portion of the land for the purpose of erecting a homestead with or without an obligation to pay rent for the use and occupation of the site so given; and "kudiyiruppu" means the site so given together with the house, hut or shed thereon which is used as a place of residence by the Kudikidappukaran with the permission of the owner;

(*d*) "land holder" means a person who is entitled to be and is in possession and enjoyment of a parcel of land or holding whether as owner, mortgagee, lessee, or otherwise;

(*e*) "owner" means a person who is entitled to the absolute proprietorship of land and includes, in the case of land of which superintendence has been assumed by the court of wards under the Travancore Court of Wards Act, 1110 or the Cochin Court of Wards Act, XIII of 1097, the Collector or the Tahsildar, as the case may be;

(*f*) "prescribed" means prescribed by Rules made under this Act.

3. *Act not applicable to certain lands etc.* This Act shall not apply to:—

(a) lands in the possession of the Government; or

(b) lands administered by the Administrator General, Official Receiver or any officer appointed by a court under the provisions of any law in force or by any person holding under or deriving title from any of them; or

(c) buildings rented out including houses, shops or warehouses and the sites thereof together with the gardens or lands appurtenant thereto; or

(d) lands or buildings or both given on lease for industrial or commercial purposes.

4. *Kudikidappukaran to have permanent right of occupancy in Kudiyiruppu.* (1) Subject to the provisions of this Act, every Kudikidappukaran who is at the date of commencement of this Act in occupation of a kudiyiruppu to which this Act applies, or who may thereafter be permitted by an owner or any other landholder with the owner's consent to be in occupation of a kudiyiruppu to which this Act applies shall have a permanent right of occupancy in such kudiyiruppu and shall not be evicted therefrom except in accordance with the provisions of this Act. Such permission or consent shall be in writing and registered.

(2) Every Kudikidappukaran who is at the date of commencement of this Act in occupation of a Kudiyiruppu to which this Act applies shall be deemed to be in occupation of such kudiyiruppu with the permission of the owner.

5. *No merger of the right of Kudiyiruppu.* A person who has under this Act a right of occupancy in a kudiyiruppu shall continue to retain that right even after he becomes entitled to the possession of the whole property of which the kudiyiruppu forms a portion either as mortgagee or lessee.

6. *Kudikidappukaran's interest heritable, but not alienable.* The interest of a Kudikidappukaran in his kudiyiruppu shall be heritable but not alienable.

7. *Kudikidappukaran not liable to be evicted except on certain grounds.* (1) No Kudikidappukaran shall be evicted from his Kudiyiruppu except in execution of a decree for eviction which may be passed against him on any of the following grounds:—

(a) that he has intentionally and wilfully committed acts of waste on the holding;

(b) that he has unlawfully appropriated any part of the produce from the holding;

(c) that the owner requires the land bonafide for building purposes for himself or for any member of his family or tarwad or thavazhi and the site is necessary for the convenient occupation of the building so to be constructed;

Explanation:—The wife or husband and the children and grand-children of the owner shall be deemed to be members of the owner's family.

(*d*) that he has alienated his right to the Kudiyiruppu to another person;

(*e*) that he has rented or leased out his Kudiyiruppu to another person;

(*f*) that he or his family has ceased to reside in his kudiyiruppu for a continuous period of one year;

(*g*) that he has another Kudiyiruppu or has obtained ownership and possession of land on which a homestead could be erected; or

(*h*) that in respect of the kudiyiruppu situate within the limits of the City of Trivandrum as defined in the Trivandrum City Mnnicipal Act (IV of 1116) or within the limits of the Municipalities constituted under the law relating to Municipalities, the owner pays seven and a half per centum of the value of the Kudiyiruppu to the Kudikidappukaran.

(2) Where a Kudikidappukaran is sought to be evicted from his Kudiyiruppu which is situate outside the limits of the City of Trivandrum as defined in the Trivandrum City Municipal Act (IV of 1116) and the limits of the Municipalities constituted under the law relating to Municipalities—

(i) on the ground specified in clause (a) or clause (b) of sub-section (1), the owner shall pay to the Kudikidappukaran the full value of the homestead and also seventyfive per centum of the value of the site comprised in the Kudiyiruppu; and

(ii) on the ground specified in clause (e) of sub-section (1)—

(*a*) the owner shall provide the Kudikidappukaran with another site for his use and occupation on the same terms and conditions in any of the lands belonging to the owner in the same village equal in extent to the area of the Kudiyiruppu; or

(*b*) where the owner has no other lands in the same village, he shall pay to the Kudikidappukaran the full value of the Kudiyiruppu.

8. *Bar of suit for eviction.* No suit shall be maintainable for the eviction of a Kudikidappukaran from a kudiyiruppu to which this Act applies except in accordance with the provisions of this Act.

9. *Claims in respect of Kudiyiruppu may be jointly tried with claims for recovery of possession of property.* Notwithstanding anything contained in any other law to the contrary, all claims in respect of any kudiyiruppu arising in any suit for the recovery of possession of immovable property shall be tried and

settled in such suit, and the decree shall contain a description of the kudiyiruppu on any such property sufficient for the purpose of fixing the location thereof.

10. *Court's power to order re-location of kudiyiruppu.* (1) In a suit by the owner, mortgagee, lessor or any other person for the recovery of possession of immovable property whereon there is a kudiyiruppu to which this Act applies, the court shall, on the application of any of the parties to the suit or may, of its own motion, direct the dwelling house to be removed and re-erected on another site at the cost of the applicant or of the party directed by the court and its extent fixed in such manner as not to cause inconvenience to the parties and as appears to the court just and equitable.

(2) Any order under sub-section (1) shall have the effect of and be subject to appeal as a decree.

11. *Suit for re-location of kudiyiruppu.* Notwithstanding anything contained in any other provision of this Act, the owner of a holding may require the kudikidappukaran to shift to a new kudiyirippu to be erected at the owner's cost either on the same or another land of the owner and if the kudikidappukaran does not comply with the demand may institute a suit against him for the purpose and if the court, on a consideration of all the circumstances deem it just and equitable to do so may direct the re-location of the Kudiyiruppu at the cost of the owner:

Provided that no such suit shall be instituted without giving the kudikidappukaran one month's notice by registered post.

12. *Register of kudikidappukar to be kept in every village.* (1) Government shall, as soon as may be, cause a register of kudikidappukars to be maintained in each village showing the survey number of the land or holding, the location of the kudiyirippu, the name of the owner and of the person in possession of such holding and the name of the kudikidappukaran with such other particulars as may be prescribed.

(2) Every kudikidappukaran who is in occupation of a kudiyiruppu at the commencement of this Act, shall apply to the Village Officer of the Village where he resides to be registered as such within one year from the date of the commencement of this Act. Failure to apply within the period allowed shall entail forfeiture of the rights under this Act.

(3) Government shall have the power to make rules for carrying into effect the provisions contained in this section.

13. *Repeal.* (1) The Travancore Prevention of Eviction Act, 1124 (Act XXII of 1124) and the Cochin Proclamation, XVIII of 1122 are hereby repealed.

(2) Every Kudikidappukaran registered under the Travancore Prevention of Eviction Act, 1124, (Act XXII of 1124) shall be deemed to be a Kudiktdappukaran registered under this Act.

(3) The suits seeking eviction of Kudikidappukars and appeals, reviews, revisions, decrees and applications in execution in respect ol such suits stayed by the Cochin Proclamation XVIII of 1122 shall be disposed of in accordance with the provisions of this Act.

V. KRISHNAMOORTHY,
Secretary, Legislative Assembly.

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THE TRAVANCORE-COCHIN GENERAL SALES TAX (AMENDMENT) BILL, 1955.

(As reported by the Select Committee)

A BILL FURTHER TO AMEND THE TRAVANCORE-COCHIN GENERAL SALES TAX ACT, 1125.

Preamble. Whereas it is expedient further to amend the Travancore-Cochin General SalesTax Act, 1125, for the purposes hereinafter appearing;

Be it enacted in the Sixth Year of the Republic of India as follows:—

1. *Short title and commencement.* (1) This Act may be called the Travancore-Cochin General Sales Tax (Amendment) Act, 1955.

(2) It shall come into force on such date (hereinafter referred to as "the appointed day") as the Government may, by notification in the Gazette, appoint.

2. *Amendment of Section 2, Act XI of 1125.* In Section 2 of the Travancore-Cochin General Sales Tax Act, 1125 (Act XI of 1125) hereinafter referred to as the said Act,—

(i) after clause (*a*), the following clause shall be inserted, namely:—

"(*aa*) "Appellate Tribunal" means the Tribunal appointed under Section 2A;"

(ii) after clause (*c*), the following clause shall be inserted, namely:—

"(*cc*) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Sales Tax under Section 2B;"

3. *Insertion of new Sections 2A and 2B in Act XI of 1125.* After Section 2 of the said Act, the following sections shall be inserted, namely:—

"2A. *Appellate Tribunal.* (1) The Government shall appoint an Appellate Tribunal consisting of three members to exercise the functions conferred on the Appellate Tribunal by or under this Act. Of the three members one shall be a judicial officer not below the rank of Additional District Judge. He shall be the Chairman of the Tribunal. The other two members shall possess such qualifications as may be prescribed.

(2) Any vacancy in the office of a member of the Appellate Tribunal shall be filled up by the Government.

(3) (*a*) The functions of the Appellate Tribunal may be exercised by a Bench consisting of all the members of the Tribunal or by a Bench consisting of two members constituted by

the Chairman or, in the event of the office of a member other than the Chairman being vacant, by a Bench consisting of the Chairman and the other member:

Provided that, if any case which comes up before a Bench of which the Chairman is not a member) involves a question of law, the Bench may, in its discretion, reserve such case for decision by a Bench to be constituted under this clause of which the Chairman shall be a member.

(b) Where an appeal or application is heard by a Bench consisting of all the three members of the Tribunal, and the members differ in opinion on any point, the point shall be decided in accordance with the opinion of the majority.

(c) Where an appeal or application is heard by a Bench consisting of two members, and the members are divided in their opinion on any point, they shall state the point upon which they differ, and the appeal or application shall then be heard upon that point only by the third member, and such point shall be decided according to the opinion of the majority of the members who have heard the appeal or application, including those who first heard it.

(4) The Appellate Tribunal shall, with the previous sanction of the Government, make regulations consistent with the provisions of this Act and the rules made thereunder, for regulating its procedure and the disposal of its business.

(5) The regulations made under sub-section (4) shall be published in the Gazette.

2B. *Appointment of Deputy Commissioner of Sales tax.* The Government may appoint a Deputy Commissioner of Sales Tax for the purpose of performing the functions conferred on him by or under this Act."

4. *Amendment of Section 3, Act XI of 1125.* In Section 3 of the said Act,—

(i) for clause (b) of sub-section (1), the following clause shall be substituted, namely:—

"(b) the tax shall be calculated at the rate of six pies for every Rupee in the turnover relating to turmeric, nuxvomica, kacholam, arecanut, tamarind, laurel oil, cocoanut and copra and at the rate of three pies for every Rupee in the turnover relating to other goods;"

(ii) in sub-section (2),

(a) items (i) to (ix) shall be renumbered as items (iii) to (xi) respectively; and before item (iii) as so renumbered, the following shall be inserted as items (i) and (ii), namely:—

"(i) Mill cloth (whether of silk, artificial silk, wool, flax, or any other material), which is not made wholly of cotton and in which the count of warp yarn employed (excluding the border) is 17s or finer (whether single or folded)	One anna three pies
(ii) Cotton cloth made in mills, in which the count of warp yarn employed (excluding the border) is 35s or finer (whether single or folded)	One anna three pies"

(b) for item (ii) renumbered as item (iv), the following item shall be substituted, namely:—

"(iv) Refrigerators; air conditioning plants; component parts of refrigerators or air conditioning plants	Six pies".

(c) in item (iii) (b), renumbered as item (v) (b), after the words "Radio gramophones" the words "component parts of radio- gramophones" shall be added.

5. *Amendment of Section 4, Act XI of 1125.* In Section 4 of the said Act, the words and figure "of Section 3" shall be omitted.

6. *Amendment of Section 5, Act XI of 1125.* In Section 5 of the said Act,—

(i) for clause (iii), the following clause shall be substituted, namely: —

"(iii) the sale of any cloth woven on handlooms wholly or partly with mill yarn shall be exempt from taxation under Section 3, sub-section (1)";

(ii) in clause (v), the words "and of newspapers that is to say, of periodical works containing news or comments on public news" shall be omitted; and

(iii) after clause (vi), the following clause shall be inserted, namely: —

"(vii) the sale of pepper, ginger, turmeric, nuxvomica, kacholam, lemongrass oil, arecanut, tamarind, laurel oil, coconut and copra shall be liable to tax under Section 3, sub-section (1). only at such single point in the series of sales by successive dealers as may be prescribed".

7. *Amendment of Section 9, Act XI of 1125.* In Section 9 of the said Act, in the second proviso, the word "legitimate" and the words "actually incurred by him and specified in the accounts" shall be omitted, and the words "which are specified in the accounts and which the assessing authority considers legitimate" shall be added at the end.

8. *Insertion of new Section 11 A, in Act XI of 1125.* After Section 11 of the said Act, the following section shall be inserted, namely :—

"11A. *Government etc., entitled to collect tax as registered dealers.* (1) Notwithstanding anything contained in this Act, the Government, the Council of the Corporation of the City of Trivandrum and the Municipal Councils constituted under the law relating to municipalities for the time being in force shall, in respect of any sale of goods effected by them, be entitled to collect by way of tax any amount which a registered dealer effecting such sale would have been entitled to collect by way of tax under this Act.

(2) The Council of the Corporation of the City of Trivandrum and every Municipal Council which collects any amount by way of tax under sub-section (1) shall pay over to the Government the amount so collected and if any such amount is not so paid the Collector shall, on requisition by the assessing authority, make an order directing the person having the custody of the municipal fund to pay it in priority to any other charge against such fund except charges for the service of authorised loans, and such person shall be bound to comply with such order."

9. *Amendment of Section 14, Act XI of 1125.* In Section 14 of the said Act,—

(i) in sub-section (1)—

(a) after the words "assessment made on him", the words, figures and brackets "under Section 12, sub-section (2)", shall be inserted;

(b) in the proviso, after the word "provided", the word "further", shall be inserted;

(c) before the proviso, the following proviso, shall be inserted, namely :—

"Provided that the appellate authority may admit an appeal preferred after the period of thirty days aforesaid, if the authority is satisfied that the assessee had sufficient cause for not preferring the appeal within that period:";

(ii) in sub-section (4), for the words and figures "subject to the powers of revision conferred by Section 15", the words, figures and letter "subject to the provisions of Sections 15 to 15 C" shall be substituted.

10. *Substitution of new Sections for Section 15, Act XI of 1125.* For Section 15 of the said Act, the following Sections shall be substituted, namely:—

"15. *Authorities competent to pass orders in revision.* (1) The Deputy Commissioner may:—

(i) *suo motu*, or

(ii) on application,

call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to him, for the purpose of satisfying himself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as he thinks fit:

Provided that the Deputy Commissioner shall not revise any order or proceeding under this sub-section if—

(a) where an appeal against the order or proceeding lies to the Appellate Tribunal, the time within which such appeal may be made has not expired; or

(b) the order or proceeding has been made the subject of an appeal to the Appellate Tribunal.

(2) The Board of Revenue may—

(i) *suo motu*, or

(ii) in respect of any order passed or proceeding recorded by the Deputy Commissioner under sub-section (1) or any other provision of this Act, on application,

call for and examine the record of any order passed or proceeding recorded under the provisions of this Act by any officer subordinate to it, for the purpose of satisfying itself as to the legality or propriety of such order, or as to the regularity of such proceeding, and may pass such order with respect thereto as it thinks fit:

Provided that the Board of Revenue shall not revise any order or proceeding under this sub-section if—

(a) where an appeal against the order or proceeding lies to the Appellate Tribunal, the time within which such appeal may be made has not expired; or

(b) the order or proceeding has been made the subject of an appeal to the Appellate Tribunal.

(3) In relation to an order of assessment passed under this Act the power of the Deputy Commissioner under clause (i) of sub-section (1) and that of the Board of Revenue under clause (i) of sub-section (2) shall be exercisable only within a period of four years from the date on which the order was communicated to the assessee.

(4) Every application under sub-section (1) (ii) or (2) (ii) shall be preferred within sixty days from the date on which the order or proceeding to which the application relates was communicated to the applicant:

Provided that the authority concerned may admit an application preferred after the period of sixty days aforesaid, if the authority is satisfied that the applicant had sufficient cause for not preferring the application within that period.

(5) No order shall be passed under sub-section (1) or (2) enhancing any assessment, unless an opportuoity has been given to the assessee to show cause against tha proposed enhancement.

15A. *Appeal to Appellate Tribunal.* (1) Any assessee objecting to an order relating to assessment passed—

(i) by the appellate authority under Section 14, or

(ii) by the Deputy Commissioner *suo motu* under Section 15, sub-section (1),

may, if the assessee has not preferred an application for revision of the order under Section 15, sub-section (1), or under sub-section (2) of that section, as the case may be, appeal to the Appellate Tribunal within sixty days from the date on which the order was communicated to the assessee.

(2) The Appellate Tribunal may admit an appeal preferred after the period of sixty days referred to in sub-section (1) if it is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(3) The appeal shall be in the prescribed form, shall be verified in the prescribed manner, and shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(4) The Appellate Tribunal shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(5) Notwithstanding that an appeal has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case :

Provided that the Appellate Tribunal may, in its discretion permit the appellant to pay the tax in such number of instalments, or give such other direction in regard to the payment of the tax, as it thinks fit :

Provided further that if as a result of the appeal any change becomes necessary in such assessment, the Appellate Tribunal may authorise the assessing authority to amend the assessment, and on such amendment being made, the amount overpaid by the assessee shall be refunded to him without interest, or the further amount of the tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(6) (a) The Appellate Tribunal may, on the application either of the assessee or the Deputy Commissioner, review any order passed by it under sub-section (4) on the basis of facts which were not before it when it passed the order :

Provided that no such application shall be preferred more than once in respect of the same order.

(b) The application for review shall be preferred in the prescribed manner and within one year from the date on which

the order to which the application relates was communicated to the applicant; and where the application is preferred by the assessee, it shall be accompanied by such fee not exceeding one hundred rupees as may be prescribed.

(7) Every order passed by the Appellate Tribunal under sub-section (4) or sub-section (6) shall be communicated by it to the assessee, the authority from whose order the appeal was preferred, the Deputy Commissioner, if he is not such authority, and the Board of Revenue.

(8) Every order passed by the Appellate Tribunal under sub-section (4) shall, subject to the provisions of sub-section (6) and Section 15B, be final; and every order passed by it under sub-section (6) shall, subject to the provisions of Section 15B, be final.

15B. *Revision by High Court.* (1) Within sixty days from the date on which an order under Section 15A, sub-section (4) or sub-section (6), was communicated to him, the assessee or the Deputy Commissioner may prefer a petition to the High Court against the order on the ground that the Appellate Tribunal has either decided erroneously, or failed to decide, any question of law:

Provided that the High Court may admit a petition preferred after the period of sixty days aforesaid if it is satisfied that the petitioner had sufficient cause for not preferring the petition within that period.

(2) The petition shall be in the prescribed form, shall be verified in the prescribed manner, and shall, where it is preferred by the assessee, be accompanied by a fee of one hundred rupees.

(3) If the High Court, on perusing the petition, considers that there is no sufficient ground for interfering, it may dismiss the petition summarily:

Provided that no petition shall be dismissed unless the petitioner had a reasonable opportunity of being heard in support thereof.

(4) (a) If the High Court does not dismiss the petition summarily, it shall, after giving both parties to the petition a reasonable opportunity of being heard, determine the question or questions of law raised and either reverse, affirm or amend the order against which the petition was preferred or remit the matter to the Appellate Tribunal with the opinion of the High Court on the question or questions of law raised or pass such other order in relation to the matter as the High Court thinks fit.

(b) Where the High Court remits the matter to the Appellate Tribunal under clause (a) with its opinion on the question or questions of law raised, the latter shall amend the order passed by it in conformity with such opinion.

(5) Before passing an order under sub-section (4), the High Court may, if it considers it necessary so to do, remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

(6) Notwithstanding that a petition has been preferred under sub-section (1), tax shall be paid in accordance with the assessment made in the case :

Provided that the High Court may, in its discretion, permit the petitioner to pay the tax in such number of instalments, or give such other direction in regard to the payment of the tax, as it thinks fit ;

Provided further that if as a result of the petition any change becomes necessary in such assessment, the High Court may authorise the assessing authority to amend the assessment, and on such amendment being made, the amount overpaid by the assessee shall be refunded to him without interest, or the further amount of tax due from him shall be collected in accordance with the provisions of this Act, as the case may be.

(7) (a) The High Court may, on the application either of the assessee or of the Deputy Commissioner, review any order passed by it under sub-section (4) on the basis of facts which were not before it when it passed the order.

(b) The application for review shall be preferred within such time, and in such manner as may be prescribed, and shall where it is preferred by the assessee be accompanied by a fee of one hundred rupees.

(8) In respect of every petition or application preferred under sub-section (1) or sub-section (7), the costs shall be in the discretion of the High Court.

15C. *Appeal to the High Court.* (1) Any assessee objecting to an order relating to assessment passed by the Board of Revenue *suo motu* under Section 15, sub-section (2), may appeal to the High Court within sixty days from the date on which the order was communicated to him :

Provided that the High Court may admit an appeal preferred after the period of sixty days aforesaid if it is satisfied that the assessee had sufficient cause for not preferring the appeal within that period.

(2) The appeal shall be in the prescribed form, shall be verified in the prescribed manner, and shall be accompanied by a fee of one hundred rupees.

(3) The High Court shall, after giving both parties to the appeal a reasonable opportunity of being heard, pass such order thereon as it thinks fit.

(4) The provisions of Section 15 B, sub-sections (6) to (8), shall apply in relation to appeals preferred under sub-section (1) as they apply in relation to petitions preferred under Section 15 B, sub-section (1).

15D. *Petitions, applications and appeals to High Court to be heard by a Bench of not less than two Judges.* Every petition, application or appeal preferred to the High Court under Sections 15B and 15C shall be heard by a Bench of not less than two Judges, and in respect of such petition, application or appeal, the provisions of Section 98 of the Code of Civil Procedure, 1908, shall, so far as may be, apply."

11. *Amendment of Section 17, Act XI of 1125.* In Section 17 of the said Act—

(i) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) If any officer not below the rank of assessing authority has reason to suspect that any dealer is attempting to evade the payment of any tax or fee due from him under this Act, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same. The Officer who seizes such accounts, registers or documents shall return them within ten days from the date of seizure unless they are required for a prosecution."

(ii) in sub-section (3), for the word, figure and brackets "sub-section (2)," the words, figures and brackets "sub-section (2) or (2A)" shall be substituted.

12. *Insertion of new Section 23A in Act XI of 1125.* After Section 23 of the said Act, the following section shall be inserted, namely:—

"23A. *Courts not to set aside or modify assessments except as provided in this Act.* No suit or other proceeding shall, except as expressly provided in this Act, be instituted in any court to set aside or modify any assessment made under this Act."

13. *Amendment of Section 24, Act XI of 1125.* In Section 24 of the said Act, in sub-section (2), after clause (i), the following clauses shall be inserted, namely:—

"(ii) the term of office, and the conditions of service, of the members of the Appellate Tribunal;

(iii) the circumstances in which, and the extent to which, fees paid in pursuance of Section 15A may be refunded."

14. *Disposal of certain applications pending with the Board of Revenue or the Deputy Commissioner on the appointed day.* Notwithstanding anything contained in the said Act or in this Act, any application preferred under Section 15 of the said Act against an order of the appellate authority under Section 14 of that Act, and pending before the Board of Revenue, Commissioner or the Deputy Commissioner on the appointed day, shall, on the expiration of thirty days from that day, stand transferred to the Appellate Tribunal for disposal as if it were an

appeal preferred under, and in accordance with, the provisions of Section 15A of the said Act as amended by this Act:

Provided that if within the thirty days aforesaid, the applicant intimates in writing to the Board of Revenue or the Deputy Commissioner, as the case may be, that he does not desire the application to be disposed of by the Appellate Tribunal, the application shall be disposed of by the Deputy Commissioner as if it had been preferred to him under, and in accordance with, the provisions of Section 15, sub-section (1) of the said Act as amended by this Act.

15. *Institution of certain appeals and applications and the disposal thereof.* Notwithstanding anything contained in this Act, if on the appointed day, the period within which an application for revision could have been preferred to any authority competent to dispose of such application under Section 15 of the said Act, has not elapsed, an appeal may be preferred to the Appellate Tribunal within such period or an application for revision may be preferred, in the case of an order by the Deputy Commissioner, to the Board of Revenue and in the case of an order by the appellate authority, to the Deputy Commissioner within such period, and any such appeal or application may be disposed of as if it were an appeal or application preferred under Section 15 A, or Section 15 (2) (ii) or 15 (1) (ii), as the case may be, of the said Act as amended by this Act.

V. KRISHNAMOORTHI,
Secretary, Legislative Assembly.

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